

United States Senate
WASHINGTON, DC 20510

May 9, 2014

479

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

We are writing today to express serious concern over reports that the Federal Communications Commission (FCC) has plans to reverse its earlier commitment to preserving a free and open Internet for all Americans.

It is our understanding that the Commission may soon vote on a Notice of Proposed Rulemaking (NPRM) for new Open Internet rules. This vote comes in the wake of the United States Court of Appeals for the District of Columbia's recent decision vacating the Commission's 2010 Open Internet Order. This NPRM is a necessary step forward. As the potential to profit from monopolistic, anti-competitive, anti-innovation, and anti-consumer practices has grown, the need for explicit, enforceable rules has become more urgent. However, it will only be a positive step if you and your staff can craft meaningful rules.

You must act promptly to prevent blocking – both intentional and incidental – ban discrimination, and promote increased transparency in the Internet marketplace. The Commission clearly recognizes the benefits of an open Internet, and the need for reasonable market rules that will preserve Americans' access to the services and sites of their choosing. The court's decision did nothing change the need for such rules. It merely overturned the FCC's legal theory regarding its authority for the 2010 order.

Unfortunately, we fear that specific provisions of the NPRM may be insufficient to accomplish the task. The current Internet is a free market of products and ideas unparalleled in human history, and the FCC must preserve the type of Internet access that allows that marketplace to thrive. Unfortunately, reports on your current proposal suggest it may have unintended, deleterious effects. While several posts and statements from the Chairman's office offer assurances about your goals, we worry that the NPRM language would permit broadband providers to collect new tolls from innovators, entrepreneurs and all manner of speakers on the Internet.

Particularly concerning are reports that the NPRM will allow "paid prioritization arrangements" as long as they are "commercially reasonable," as determined by a complicated series of tests that the Commission has yet to develop. Changing the rules – to let broadband Internet Service Providers (ISPs) demand payment from websites and app developers – would eradicate Net Neutrality, not preserve it. Any time one group of packets is favored on an IP network the rest of the traffic is, by definition, discriminated against. Given the current state of congestion the ISPs have allowed to

Letter to Wheeler on NPRM
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develop at their interconnections with the Internet, any discrimination results in a degradation or blocking of services to the consumer – services the consumer has paid for.


The genius of the Internet is that it allows innovation without permission, not innovation only after cutting a deal with the ISP and receiving the FCC's blessing for it.

Sanctioning paid prioritization would allow discrimination and irrevocably change the Internet as we know it. Small businesses, content creators and Internet users must not be held hostage by an increasingly consolidated broadband industry. Start-ups should not find themselves unable to get a foot in the door, deterred from making the kind of investments that make the Internet the engine for creativity and economic growth we know today. Consumers should not be faced with fewer choices at ever higher prices while ISPs monetize their data and dictate who succeeds and who fails online.

The D.C. Circuit decision is clear. The Commission has to allow substantial discrimination if it chooses to base its Open Internet policies on Section 706 of the Telecom Act. The court said that the FCC cannot, under Section 706, adopt rules that resemble "common carrier" requirements to serve everyone. Yet that is exactly what Net Neutrality means: keeping the Internet open to all, and making sure that Internet access is free from the threat of blocking, discrimination, and pay-to-play schemes.

Fortunately, the Commission still has the time and ability to rectify this problem. We ask you to ensure that the NPRM includes specific questions about Title II and the more robust rules that you could base on this authority. The item should facilitate discussion of the best option for protecting the Open Internet – not merely accept that the Commission has no choice but to permit toll lanes and other kinds of unreasonable discrimination. Consumers and innovators cannot afford to wander through this regulatory murk any longer. The time has come for the FCC to adopt Net Neutrality rules that provide clear, strong protections for the Open Internet and all Americans, once and for all.

Sincerely,


Ron Wyden
Charles E. Schumer
Elizabeth Warren
Bernard Sanders
Al Franken
Kirsten E. Gillibrand

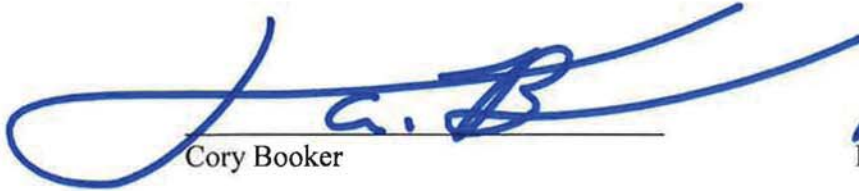
Letter to Wheeler on NPRM
May 9, 2014



Edward J. Markey



Jeff Merkley



Cory Booker



Richard Blumenthal



Barbara Boxer



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Ron Wyden
United States Senate
223 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans. I share your sense of urgency on this matter. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* ("*Notice*") adopted by the Commission in May 2014 begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission's review.

The Commission has struggled for over a decade with how best to protect and promote an open Internet. While there has been bipartisan consensus, starting under the Bush Administration with Chairman Powell, on the importance of an open Internet to economic growth, investment, and innovation, we find ourselves today faced with the worst case scenario: we have no Open Internet rules in place to stop broadband providers from limiting Internet openness. The *status quo* is unacceptable. The Commission has already found, and the court has agreed, that broadband providers have economic incentives and technological tools to engage in behavior that can limit Internet openness and harm consumers and competition. As such, the Commission must craft meaningful rules to protect the open Internet, and it must do so promptly. I can assure you that I will utilize the best tools available to me to ensure the Commission adopts effective and resilient open Internet rules. Unless and until the Commission adopts new rules, broadband providers will be free to block, degrade, or otherwise disadvantage innovative services on the Internet without threat of sanction by the FCC.

With respect to the legal foundation of the rules, I believe that the Section 706 framework set forth by the court provides us with the tools we need to adopt and implement robust and enforceable Open Internet rules. Nevertheless, as you specifically urge in your letter, the Commission is also seriously considering moving forward to adopt rules using Title II of the Communications Act as the foundation for our legal authority. The *Notice* asks specific questions about Title II, including whether the Commission should 1) revisit its classification of Broadband Internet Access as an information service; or 2) separately identify and classify as a telecommunications service a service that "broadband providers . . . furnish to edge providers," as proposed by Mozilla in a May 5 Petition filed with the agency. The *Notice* seeks comment on

the benefits of both Section 706 and Title II, including the benefits of one approach over the other, to ensure the Internet remains an open platform for innovation and expression.

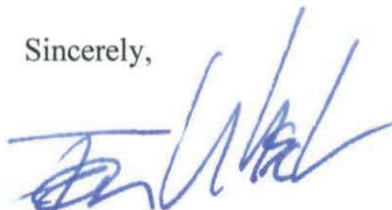
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This *Notice* is the first step in the process, and I look forward to comments from all interested stakeholders, including members of the general public, as we develop a fulsome record on the many questions raised in the *Notice*. To that end, in an effort to maximize public participation in this proceeding, we have established an Open Internet email address – openinternet@fcc.gov – to ensure that Americans who may not otherwise have the opportunity to participate in an FCC proceeding can make their voices heard. In addition, to ensure sufficient opportunity for broad public comment, we have provided a lengthy comment and reply period through September 10, 2014, that will allow everyone an opportunity to participate.

Again, I appreciate your deep interest in this matter and look forward to continued engagement with you as the proceeding moves forward.

Sincerely,



Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Richard Blumenthal
United States Senate
702 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Blumenthal:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans. I share your sense of urgency on this matter. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission's review.

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Again, I appreciate your deep interest in this matter and look forward to continued engagement with you as the proceeding moves forward.

Sincerely,

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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 30, 2014

The Honorable Cory Booker
United States Senate
141 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Booker:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans. I share your sense of urgency on this matter. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission's review.

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Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Boxer:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans. I share your sense of urgency on this matter. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission's review.

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Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Al Franken
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Franken:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans. I share your sense of urgency on this matter. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission's review.

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FEDERAL COMMUNICATIONS COMMISSION
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OFFICE OF
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June 30, 2014

The Honorable Kirsten Gillibrand
United States Senate
478 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Gillibrand:

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Sincerely,

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Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Edward Markey
United States Senate
218 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Markey:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans. I share your sense of urgency on this matter. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* ("*Notice*") adopted by the Commission in May 2014 begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission's review.

The Commission has struggled for over a decade with how best to protect and promote an open Internet. While there has been bipartisan consensus, starting under the Bush Administration with Chairman Powell, on the importance of an open Internet to economic growth, investment, and innovation, we find ourselves today faced with the worst case scenario: we have no Open Internet rules in place to stop broadband providers from limiting Internet openness. The *status quo* is unacceptable. The Commission has already found, and the court has agreed, that broadband providers have economic incentives and technological tools to engage in behavior that can limit Internet openness and harm consumers and competition. As such, the Commission must craft meaningful rules to protect the open Internet, and it must do so promptly. I can assure you that I will utilize the best tools available to me to ensure the Commission adopts effective and resilient open Internet rules. Unless and until the Commission adopts new rules, broadband providers will be free to block, degrade, or otherwise disadvantage innovative services on the Internet without threat of sanction by the FCC.

With respect to the legal foundation of the rules, I believe that the Section 706 framework set forth by the court provides us with the tools we need to adopt and implement robust and enforceable Open Internet rules. Nevertheless, as you specifically urge in your letter, the Commission is also seriously considering moving forward to adopt rules using Title II of the Communications Act as the foundation for our legal authority. The *Notice* asks specific questions about Title II, including whether the Commission should 1) revisit its classification of Broadband Internet Access as an information service; or 2) separately identify and classify as a telecommunications service a service that "broadband providers . . . furnish to edge providers," as proposed by Mozilla in a May 5 Petition filed with the agency. The *Notice* seeks comment on

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Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Jeff Merkley
United States Senate
107 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Merkley:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans. I share your sense of urgency on this matter. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* ("*Notice*") adopted by the Commission in May 2014 begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission's review.

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Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Bernard Sanders
United States Senate
332 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Sanders:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans. I share your sense of urgency on this matter. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* ("*Notice*") adopted by the Commission in May 2014 begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission's review.

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Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Charles Schumer
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Schumer:

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Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Elizabeth Warren
United States Senate
C2 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Warren:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans. I share your sense of urgency on this matter. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* ("*Notice*") adopted by the Commission in May 2014 begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission's review.

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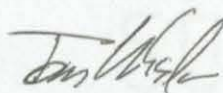
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